

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>DUNHAM'S RESORT CORP.</b>	:	ORDER
	:	DTA NO. 819106
for Revision of a Determination or for Refund of	:	
Sales and Use Taxes under Articles 28 and 29 of	:	
the Tax Law for the Period September 1, 1997	:	
through August 31, 2001.	:	

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Petitioner, Dunham's Resort Corp., 300 State Route 9L, Lake George, New York 12845-5009, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1997 through August 31, 2001.

On May 1, 2003, a subpoena issued by Assistant Chief Administrative Law Judge Daniel J. Ranalli was served on Andrew D. Bing to appear as a witness at a hearing in the above matter to be held on May 9, 2003.

On May 2, 2003, the Division of Taxation, appearing by Barbara G. Billet, Esq. (Cynthia E. McDonough, Esq., of counsel), filed a request on behalf of Mr. Bing under 20 NYCRR 3000.7(c) that the subpoena be withdrawn.

Upon review of the request filed by the Division of Taxation and the pleadings filed in this matter, Daniel J. Ranalli, Assistant Chief Administrative Law Judge, renders the following order.

***ORDER***

The basis for the request to withdraw the subpoena is that Andrew Bing has never been involved or had any part in the Division of Taxation's sales tax field audit of petitioner for the

period at issue in the instant matter. A review of the documents submitted in support of the request indicate quite clearly that Mr. Bing took no part in the audit, and, in fact, it is impossible to discern what, if any, connection he has to any other part of this case and what possible relevant testimony he could supply. Inasmuch as the only standard of evidence required by the Rules of Practice of the Tax Appeals Tribunal is that the evidence offered appears to be relevant and material (20 NYCRR 3000.15(d)(1) and Mr. Bing's testimony would have no relevance, then his testimony would not be allowed at the hearing in any event. Thus the subpoena should be withdrawn and Mr. Bing not required to appear at the hearing on May 9, 2003

The request of the Division of Taxation is allowed and the subpoena issued to Andrew D. Bing is hereby withdrawn.

DATED: Troy, New York  
May 8, 2003

/s/ Daniel J. Ranalli  
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE